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Monohary Teresa & Anor v Tan Ah Lek

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPLICATION NO B–08–278–95

B NH CHAN, MAHADEV SHANKAR AND VC GEORGE JJCA

10 JULY 1995

Civil Procedure *— Appeal — Leave to appeal — Appeal to Court of Appeal — Meaning of 'value of subject-matter of the claim' — Whether more than RM250,000 — Whether to take into account total amount awarded or only amount defendant required to pay — Courts of Judicature Act 1964 s 68(1)(a)*

C

The respondent sued the appellant in the High Court for negligence in a road accident. The High Court assessed damages on a 100% basis at RM250,050.34 but found the respondent contributorily negligent to the extent of 25% and reduced the damages accordingly to RM187,537.84. The appellant took the view that since all she was called to pay was below RM250,000, she had to obtain leave to appeal and filed a notice of motion. The motion only came up for disposal after the expiration of one month from the date of the decision. The respondent argued that since the total sum recoverable was more than RM250,000, no leave was required and the appellant should have filed her notice of appeal straightaway. Therefore, no extension of time should be given to file the notice of appeal because the delay was due to counsel's error. The issue raised in this application was the meaning of the words 'value of the subject-matter of the claim' in s 68(1)(a) of the Courts of Judicature Act 1964 ('the CJA').

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Held, dismissing the application but allowing an extension of time for the appellant to file the notice of appeal:

Section 68(1)(a) of the CJA as it stands is unsatisfactory because it is not precise. Because of this, the court did not think it right to penalize the applicant for not filing in the notice of appeal within time. So, even though the court held that leave was not required in this case, the time for filing a notice of appeal was ordered to be extended for one week.

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Obiter:

It would be preferable that s 68(1)(a) of the CJA be reworded to provide that no appeal should be brought without leave where the judgment appealed against is for the payment of a monetary sum which is less than RM250,000.

I

[Bahasa Malaysia summary

Penentang telah mendakwa perayu di Mahkamah Tinggi atas kecuaian di dalam suatu kemalangan jalanraya. Mahkamah Tinggi telah

mentaksirkan ganti rugi pada jumlah RM250,050.34 atas dasar 100% tetapi mendapati bahawa penentang juga cuai setakat 25% dan mengurangkan ganti rugi kepada RM187,537. Perayu berpendapat bahawa oleh kerana beliau hanya diminta membayar jumlah yang kurang daripada RM250,000 beliau harus mendapatkan kebenaran untuk merayu dan telah memfailkan notis usul. Usul itu hanya dibicarakan selepas tempoh satu bulan dari tarikh keputusan telah tamat. Penentang berhujah bahawa oleh kerana jumlah keseluruhan yang boleh didapati adalah melebihi RM250,000, kebenaran tidak diperlukan dan perayu sepatutnya memfailkan notis rayuannya dengan segera. Maka, perlanjutan masa tidak sepatutnya diberikan kerana kelengahan itu adalah disebabkan oleh kesilapan peguambela. Isu yang ditimbulkan di dalam permohonan ini berkenaan dengan maksud perkataan-perkataan 'nilai hal perkara dalam tuntutan itu' di dalam s 68(1)(a) Akta Mahkamah Kehakiman 1964 ('AMK').

Diputuskan, menolak permohonan itu tetapi membenarkan perlanjutan masa untuk perayu memfailkan notis rayuannya:

Seksyen 68(1)(a) AMK dalam bentuknya sekarang adalah tidak memuaskan kerana ia tidak tepat. Oleh sebab itu, mahkamah berpendapat bahawa adalah tidak adil untuk mendenda perayu kerana tidak memfailkan notis rayuan dalam had masa yang ditetapkan. Oleh itu, walaupun mahkamah memutuskan bahawa kebenaran tidak diperlukan dalam kes ini, tempoh untuk memfailkan notis rayuan diperintahkan supaya dilanjutkan selama satu minggu.

Obiter:

Adalah lebih baik jika perkataan di dalam s 68(1)(a) AMK disusun semula untuk memperuntukkan bahawa tiada rayuan yang boleh dibawa tanpa kebenaran apabila penghakiman terhadap mana rayuan dibuat adalah untuk pembayaran suatu jumlah kewangan yang kurang daripada RM250,000.]

Notes

For cases on leave to appeal, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 478–506.

Case referred to

State of Maharashtra v Mishrilal AIR 1964 SC 457 (distd)

Legislation referred to

Civil Law Act 1956 s 12(2)
Courts of Judicature Act 1964 s 68(1)(a)

Appeal from: Civil Suit No 23–38–93 (High Court, Shah Alam)

A

Sin Yoong Ming (*Othman Hashim & Co*) for the appellant.
M Thiruchelvasegaram (*M Segaram & Co*) for the respondent.

Cur Adv Vult

B **Mahadev Shankar JCA**: This application for leave to appeal has raised in sharp focus the ambiguities involved in the words 'value of the subject-matter of the claim' in s 68(1)(a) of the Courts of Judicature Act 1964.

The action in the court below was a runner. The plaintiff claimed damages for the defendant's negligence. By filing the action in the High C Court in 1993 it follows that the quantum of damages claimed was in excess of the statutory jurisdiction of the sessions court at that time, ie RM100,000. (This was increased to RM250,000 by Act A887 on 24 June 1994).

The defendant pleaded contributory negligence. At the conclusion of D the trial, the judge found the plaintiff 25% to blame. As required by s 12(2) of the Civil Law Act 1956, the trial judge found the total damages recoverable, if the plaintiff had not been at fault, to be RM250,050.34. He then reduced the damages recoverable having regard to the plaintiff's share of blame to RM187,537.84.

E We propose to assume for the purpose of this judgment that on the basis of 100% liability the plaintiff hoped to recover a sum in excess of RM250,000. The defendant took the view that since all she was called upon to pay was below RM250,000, she had to obtain leave to appeal. So she filed the required notice of motion in due time supported by the necessary affidavit and served it upon the plaintiff's solicitors.

F However, by the time this motion came up for disposal, the period of one month from the date of the decision had long since expired. The plaintiff/respondent contended that since the trial judge had found the total sum recoverable to be more than RM250,000 that was 'the value of the subject-matter of the claim', no leave was required, and the defendant G should therefore have filed her notice straightaway. Therefore, no extension of time should be given because the delay was due to counsel's error which was not an excuse or a special circumstance.

It is curious that the present problem has not come up before. Neither counsel assisted us with any cases and left us to our own devices.

H 'Value' is a word of 'very elastic meaning' and has bedevilled litigation in a number of other areas: See Butterworth's '*Words and Phrases Legally Defined*' (3rd Ed) at p 380. The Indian Civil Procedure Code requires a stamp fee to be paid on 'the value of the subject-matter in dispute' when the suit is filed or an appeal lodged. In appeals to the Privy Council, leave to appeal was only given in cases where 'the value of the matter in dispute' I exceeded a certain figure.

In the *State of Maharashtra v Mishrilal* AIR 1964 SC 457, it was decided that a revenue statute should be strictly construed and therefore

any sums awarded in excess of the amount due at the time of filing the action should be excluded, and a statute giving leave to appeal should be liberally construed. Such an approach if applied in Malaysia could side-track the purpose of s 68(1)(a) because claimants could get round the need to obtain leave merely by stipulating in their pleadings that they are claiming for more than RM250,000 in every case.

We therefore think it preferable that s 68(1)(a) should be reworded to provide that no appeal should be brought without leave where the judgment appealed against is for the payment of a monetary sum which is less than RM250,000 — exclusive of interest and costs.

The section as it stands is unsatisfactory because it is not precise. Because of this we did not think it right to penalize the applicant in the manner suggested. So, even though we held that leave was not required in this case, we directed that the time for filing a notice of appeal be extended for one week.

Order accordingly.

Reported by Azra Azman